

SECOND REGULAR SESSION

# SENATE BILL NO. 954

92ND GENERAL ASSEMBLY

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INTRODUCED BY SENATOR FOSTER.

Pre-filed December 16, 2003, and ordered printed.

TERRY L. SPIELER, Secretary.

3439S.01I

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## AN ACT

To repeal section 643.075, RSMo, and to enact in lieu thereof one new section relating to payment for contracts in the construction of air containment sources.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Section 643.075, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 643.075, to read as follows:

643.075. 1. It shall be unlawful for any person to commence construction of any air contaminant source in this state, without a permit therefor, if such source is of a class fixed by regulation of the commission which requires a permit therefor.

2. Every source required to obtain a construction permit shall make application therefor to the department and shall submit therewith such plans and specifications as prescribed by rule. The director shall promptly investigate each application and if he determines that the source meets and will meet the requirements of sections 643.010 to 643.190 and the rules promulgated pursuant thereto, he shall issue a construction permit with such conditions as he deems necessary to ensure that the source will meet the requirements of sections 643.010 to 643.190 and the rules. An application submitted for the construction or modification and operation of any regulated air contaminant source shall receive a unified construction and operating permit review process under section 643.078, unless the applicant requests in writing that the construction and operating permits be reviewed separately. If the director determines that the source does not meet or will not meet the requirements of sections 643.010 to 643.190 and the rules promulgated pursuant thereto, he shall deny the construction permit.

3. Before issuing a construction permit to build or modify an air contaminant source the director shall determine if the ambient air quality standards in the vicinity of the source are being exceeded and shall determine the impact on the ambient air quality standards from the source. The director, in order to effectuate the purposes of sections 643.010 to 643.190, may deny a construction permit if the source will appreciably affect the air quality or the air

quality standards are being substantially exceeded.

4. The director may require the applicant as a condition to the issuance of the construction permit to provide and maintain such facilities or to conduct such tests as are necessary to determine the nature, extent, quantity or degree of air contaminants discharged into the ambient air from the proposed source.

5. The director shall act within thirty days after a request for approval of an application for a construction permit. The director shall render a decision to approve or deny a construction permit within ninety days of receipt of a complete application for a class B source and within one hundred eighty-four days of receipt of a complete application for a class A source. The director shall promptly notify the applicant in writing of his action and if the construction permit is denied state the reasons therefor.

6. Any aggrieved person may appeal any permit decision made under this section, including failure to render a decision within the time period established in this section. A notice of appeal shall be filed with the commission within thirty days of the director's action or within thirty days from the date by which the decision should have been rendered if the director has failed to act.

7. (1) There shall be a one hundred-dollar filing fee payable to the state of Missouri with each application before a construction permit shall be issued. No manufacturing or processing plant or operating location or other air contaminant source shall be required to pay more than one filing fee with a construction permit application. The provisions of this section shall not apply nor require the issuance of a permit wherein the proposed construction is that of a private residence.

(2) Upon completion of the department's evaluation of the application, but before receiving a construction permit, the applicant shall reimburse the department for all reasonable costs incurred by the department whether or not a construction permit is issued by the department or withdrawn by the applicant. If the department fails to approve or deny a construction permit within the time period specified in this section, the applicant shall not be required to reimburse the department for the review of the construction permit application. The commission shall, by rule, set the hourly charge, not to exceed the actual cost thereof and not to exceed fifty dollars per hour, for review of each construction permit application **conducted by the department. If the department chooses to use an independent contractor to expedite the review of the construction permit application, and the applicant agrees in writing, the independent contractor's bill for such services shall be submitted to the department for payment. After the department has reviewed and approved the contractor's work product and billing for such services, the applicant then shall be billed by the department for the actual costs of the contractor's fees. Such fees shall not be limited to the fee established by the commission pursuant to this subsection. Any independent**

**contractor services used for reviewing permit applications will be obtained through the state competitive procurement process.** The commission may exempt any person from payment of the hourly fees under this subdivision, or may reduce such fees, upon an appeal filed with the commission by such person stating that the fee will create an unreasonable economic hardship upon such person. The commission may conduct a closed meeting and have closed records, as defined in section 610.010, RSMo, for the purpose of gathering information from the person filing an appeal for the exemption. Information obtained in this meeting may be held confidential by the commission upon the request of the person filing the appeal for exemption. If the fees or any portion of the fees imposed by this section are not paid within ninety days from the date of billing there shall be imposed interest upon the unpaid amount at the rate of ten percent per annum from the date of billing until payment is actually made. A construction permit application for a portable facility may include any site at which the portable facility is expected to be used; however, a separate site permit application shall be required when the portable facility is used or expected to be used at any site which is not included in a previously approved construction permit application. Upon receipt of the application, the applicant shall be notified by the department of hourly fees and requirements put forth in this subdivision. **An applicant may agree in advance to accept the increased costs for additional contractual review expenses for the purpose of expediting the review of a construction permit application. Such fee will be forfeited should the department be unable to deliver an expedited review in the time agreed upon.**

(3) Applicants who withdraw their application before the department completes its evaluation shall reimburse the department, **and any contractor's use by the department to review the application,** for costs incurred in the evaluation.

(4) All moneys received pursuant to this section and section 643.073 and any other moneys so designated shall be placed in the state treasury and credited to the natural resources protection fund--air pollution permit fee subaccount, created in section 640.220, RSMo, and shall be expended for the administration of this section and sections 643.073 and 643.078 and for no other purpose, and shall be used to supplement state general revenue and federal funds appropriated to the department. After appropriation, the moneys received pursuant to this section and in such fund subaccount shall be expended for the administration of this section and for no other purpose. Any unexpended balance in such fund subaccount at the end of any appropriation period shall not be transferred to the general revenue fund of the state treasury and shall be exempt from the provisions of section 33.080, RSMo. Any interest received on such deposits shall be credited to the fund subaccount.

8. Any person who obtains a valid permit from a city or county pursuant to the authority granted in section 643.140 shall be deemed to have met the requirements of this section and shall not be liable to the department for construction permit fees imposed

pursuant to subsection 7 of this section.

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